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From:

Sent: Thursday, December 22, 2011 5:37:22 PM

To:

Cc:

Subject: SOL of NOL Source Years

Hi

This email is in your response to your question regarding whether the Service must disallow a timely filed claim for refund attributable to a net operating loss (NOL) carryback if the statutory period for assessing the source years has expired.

If a refund claim relates to an overpayment that is attributable to a NOL carryback, the period to file a claim extends to three years after the time prescribed for filing the return (including extensions) for the tax year of the NOL. I.R.C. § 6511(d)(2)(A). In this case, the taxpayer filed amended returns for tax years and claiming refunds attributable to NOL carrybacks from tax years and . The taxpayer's returns for tax years and were due (including extensions) on and , respectively. The taxpayer had until to file a claim for refund with respect to the NOL carryback and until to file a claim for refund with respect to the NOL carryback. Therefore, the taxpayer timely filed its claims for refund on .

In considering the taxpayer's timely filed claims for refund attributable to a NOL carryback, the Service is permitted to examine closed years for purposes of determining the correct amount of the NOL. See Dynamics Corp of America v. United States, 392 F.2d 241, 249 (Ct. Cl. 1968) ("[A]lthough the statute of limitations may act to effectively bar the Commissioner from assessing a deficiency for a past year, it does not prohibit him from correctly recomputing tax liability for that year and using his corrected figures to offset a timely refund claim."); Rev. Rul. 56-285 (expiration of statutory period for assessment of income taxes for the year in which the loss was sustained does not preclude the making of such adjustments as may be necessary to correct the net operating loss deduction); Pacific Transport Co. v. Commissioner, 483 F.2d 209, 214-15 (9th Cir. 1973), cert. denied, 415 U.S. 948 (1974); Phoenix Electronics, Inc. v. United States, 164 F. Supp. 614, 615-616 (D.C. Mass. 1958). Therefore, the Service is not required to automatically allow or disallow a timely filed claim for refund attributable to an NOL carryback because the statute of limitations for assessing the source years have expired.

You also asked whether such a case could meet the joint committee case criteria. Although Exam failed to obtain consents to extend the period of limitations for the source years, the Service is still required to correctly compute the tax liability for those source years in order to determine the correct amount, if any, of any refund or credit attributable to a NOL in the carryback years. Accordingly, if the examination results in a refund or credit exceeding \$2 million dollars, the case would require review by the Joint Committee on Taxation under section 6405(a).

Please let me know if you have any questions.

Thank you.